

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**COMPANY PETITION No. 149 of 2005
In
COMPANY APPLICATION No. 242 of 2005
With
COMPANY PETITION No. 150 of 2005
In COMPANY APPLICATION No. 238 of 2005**

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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ADVANCE AGRISEARCH LIMITED - Petitioner(s)

Versus

... - Respondent(s)

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Appearance :

MR TANVISH U BHATT for Petitioner(s) : 1,
MR PJ MALKAN for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 02/03/2006

COMMON ORAL JUDGMENT

1. These are the petitions filed by the petitioner companies for sanction of a scheme of amalgamation

of Selcan Packaging Private Limited (the Transferor company) with Advance Agriseach Limited (the Transferee company) under Section 391 r.w. Section 394 of the Companies Act; 1956.

2.The Selcan Packaging Private Limited is a closely held private limited company situated at Valsad and is engaged in the business of manufacturing, export, import and dealing in all kinds of printed, unprinted packaging materials including metal containers, drums, corrugated paper, etc. It is stated that the said company is run and managed by the same management and engaged in the business, which would be consequential/interconnected with that of the transferee company, both the management deem it fit that to obtain optimum benefit arising on account of the supplementing business and to reduce heavy expenses of manufacturing, marketing, selling, distribution and administration of the transferor company be merged with the transferee company and thereby to have better marketability of products, minimizing expenses, enhancing productivity, reducing costs on delay of

procurement of goods, obtaining optimum profits and better turnover under one banner and benefits therefrom. It is also further submitted that upon the amalgamation of the transferor company with the transferee company, it is envisaged to acquire better market share in the business and therefore, they have submitted the proposed scheme of amalgamation of transferor company with the transferee company.

3. The proposed scheme was approved unanimously by Equity Shareholders of the transferor company through written consent letters and therefore, vide order dated 8.7.2005 passed by the learned Single Judge of this Court passed in Company Application No.238 of 2005, the meeting of the Equity Shareholders of the transferor company as required to be convened under Section 391 of the Companies Act; 1956 was dispensed with. A separate meeting of Secured and Unsecured Creditors of the transferor company for considering and, if thought fit, approving, with or without modification(s), the scheme of arrangement in the nature of amalgamation

were convened pursuant to the order passed by the learned Single Judge of this Court dated 8.7.2005 passed in Company Petition No.238 of 2005 on 9.8.2005 and the Secured and Unsecured Creditors of the transferor company have approved the scheme of arrangement in the nature of amalgamation. The result of the said meeting - report, submitted by the Chairman, are already on record. The said proposed scheme was also unanimously approved by the Equity Shareholders of the transferor company and therefore, vide order dated 12th July, 2005 passed by the learned Single Judge of this Court passed in Company Petition No.242 of 2005, the meeting of the Equity Shareholders of the transferee company as required to be held under the provisions of Section 391(2) of the Companies Act; 1956 came to be dispensed with. Similarly, as the transferee company will remain in existence even after the scheme of amalgamation is sanctioned by this Court and the Secured and Unsecured Creditors will not have to make any sacrifice and no scheme is offered in respect of them as the learned Single Judge of this Court by the said order also passed

an order dispensing with the meeting of the Secured and Unsecured Creditors of the transferee company as contemplated under Section 391(2) of the Companies Act; 1956.

4. After the petitions were admitted, the same were duly advertised in the newspapers viz. Indian Express (English Newspaper – Vadodara Edition) and Gujarat Mitra (Gujarati Newspaper – Surat Edition) and the publication of the advertisement in the Government Gazette was dispensed with as directed in the order dated 23rd August, 2005. No one has come forward with any objections to the petition even after the said publications.

5. Notice of the petition of the transferor company was served upon the Official Liquidator attached to the Gujarat High Court. Vide the report dated 11.11.2005, filed by the Official Liquidator, it is observed that the affairs of the transferor companies have not been conducted in a manner prejudicial to the interest of their members or to the public interest.

6. Notice of the petitions are served upon the Central Government and along with the affidavit dated 30.1.2006 the Dy. Registrar of Companies (Gujarat) has placed on record the letter dated 30.11.2005 issued from the Regional Director who has made observations, which reads as under :-

"The petitioner - Company may be directed to furnish the latest financial position before the Hon'ble High Court at the time of hearing."

7. Shri Tanvish Bhatt, learned advocate appearing on behalf of the respective companies meeting with the above observations has submitted that they have already submitted their current financial status by submitting latest balance-sheet and profit and loss account to the Regional Director, Department of Company Affairs, vide communication dated 21.1.2006 and therefore, it is submitted that there cannot be any objection by the Central Government.

8. I have heard Shri Tanvish Bhatt, learned advocate appearing on behalf of the respective petitioners -

companies, considering the additional affidavit and the averments therein which are stated herein above and considering the fact that the petitioners have already now produced their current financial status by submitting latest balance-sheet and profit and loss account to the Regional Director, I am satisfied that the observations made by the Regional Director do not survive and the amalgamation would be in the interest of the companies and their members and creditors and therefore, prayer in terms of paragraph - 16(a) in case of Company petition No. 149 of 2005 and prayer in terms of paragraph - 17(a) in case of Company Petition No.150 of 2005 are hereby granted.

9.Both these petitions are disposed of accordingly. So far as the cost to be paid to the Additional Standing Counsel for the Central Government is concerned, the same is quantified at Rs.3500/- per petition and the same be paid to Shri P.J. Malkan, Additional Standing Counsel for the Central Government.

(M.R.SHAH, J.)

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